IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.6364 OF 2005

Durge Raju Anant ...Applicant
Vs.
The State of Maharashtra ...Respondent

Mr. Girish Kulkarni i/by L.P. Kanal for the Applicant.
Mr. R. Y. Mirza, A.P.P. for the Respondent.

CORAM : A. S. OKA, J.
DATE : SEPTEMBER 28, 2005.

P.C.:

1. Heard the Advocate appearing for the Applicant and the learned A.P.P. for the State. This Application for Anticipatory Bail is filed on the basis of order passed by the Apex Court in a Special Leave Petition.

2. The offence has been registered against the Applicant and other directors of a Credit Society under sections 420, 406 and 34 of the Indian Penal Code. Criminal Application No.3853 of 2005 filed by the present Applicant for Anticipatory Bail came to be rejected on 11th July, 2005. When the said Application came up on board on 27th June, 2005, an assurance was given on behalf of the Applicant that substantial amount will be brought back by the Applicant within a period of two weeks. Paragraph No.1 of order dated 11th July, 2005 reads thus:

1. Heard Counsel appearing for the parties. This application for anticipatory bail is filed by the Applicant. On 27th June 2005 when this Application appeared on board an assurance was given on behalf of the Applicant that the substantial amount will be brought back by the Applicant within a period of two weeks. Shri Warunjikar for the Applicant states that the Applicant has collected only a sum of Rs.1,00,000/-. Even in the case of the complainant who is the first informant, the amount payable is more than Rs.6,00,000/-.

In paragraph No.5 of the said Order, this Court noted that the Applicant did not abide by the assurance given on 27th June, 2005. It was noted in paragraph No.5 of the order that large number of investors have filed complaints with the police regarding misappropriation of the amount by the Applicant who is the chairman of the Credit Society and other Directors. In the said order, it is noted that considering the grievance made by the large number of investors, the total amount involved was more than

eighteen lacs. While rejecting the application, this Court noted that three other offences have been registered against the Applicant with Pimpri Police Station. The second application made by the Applicant being Application No.4642 of 2005 was rejected on 19th July, 2005. It appears that both the orders passed by this Court were challenged by the Applicant by approaching the Apex Court. The order passed by the Apex Court reads thus:

> . " The Special Leave Petitions are dismissed with the observation that it would be open to the Petitioner to approach the High Court within a week with the amount due from him to the complainant and if such an application is filed the High Court may consider the question of grant of anticipatory bail to the petitioner afresh. This be not taken as an expression of opinion on merits. High Court to decide the application on its own merits."

The order dated 11th July, 2005 passed by this court notes that the Applicant did not abide by the assurance given on 27th June, 2005 to bring back

amount which was payable to the first informant. The said order also notes that total amount payable is more than eighteen lacs. After Application was rejected on 11th July, 2005 till today the Applicant did not make any effort to bring back the amount. Even from the order dated 11th July, 2005 it is clear that the amount which will have to be paid to the investors is more than eighteen lacs.

3. When this Application was heard in the morning session, a statement was made by the learned Advocate appearing for the Applicant that the Applicant was willing to deposit a sum of Rs.6 lacs and a pay-order in the said amount drawn in favour of the original complainant was ready. The learned A.P.P. pointed out that apart from the original complainant, the other complainants have come forward to make complaint against the Applicant and the total amount involved is about nineteen lacs inclusive of the sum of Rs.6 lacs. The learned A.P.P. pointed out that there are certain other investors who have not come before the police. When a query was made by me whether the Applicant will be willing to deposit balance amount of Rs.13 lacs by 03rd October, 2005, time was sought for taking instructions. The Application was kept in the afternoon session. In afternoon session, an

affidavit/undertaking is filed to deposit sum of Rs.13 lacs with the Credit Society within a period of four weeks from today. A submission was made by the Advocate for the Applicant that as he has shown willingness to deposit the entire amount as observed by the Apex Court, Aniticpatory Bail deserves to be granted.

4. The Applicant has come out with a case that he is ready to deposit only Rs.6 lacs and for balance amount of Rs.13 lacs he needs four more weeks. In the undertaking which is filed today the Applicant has made statement that the total amount payable is Rs.19 lacs. On earlier occasion the Applicant was protected on 27th June, 2005 by granting ad-interim relief only on the assurance given to the Court to deposit substantial amount within two weeks. The assurance is not complied with. The present application is based on he order of the Apex Court dated 19th September, 2005. It was expected of the Applicant to bring back the total amount of atleast Rs.18 lacs. However, as of today, he has come out with the demand draft of only Rs.6 lacs. On 27th June, 2005 an assurance was given to deposit Rs.6 lacs and more within two weeks which was not complied with. Now assurance is sought to be given that sum of Rs.13 lacs will be paid within

a period of four weeks. From 27th June, 2005 till the Apex Court passed the order, the Applicant did not deposit even the amount in respect of which assurance was given on 27th June, 2005. Considering the past conduct of the Applicant, it is very difficult to accept such assurance given today to deposit the amount within four weeks. When a query was again made whether the Applicant will be in a position to deposit the balance amount by 03rd or 04th October, 2005, the learned Advocate for the Applicant on instructions stated that it will not be possible for the Applicant to do so. In my view, the Applicant has not made compliance with order dated 19th September, 2005 passed by the Apex Court by depositing the amount due and payable to various complainants. The Applicant cannot take advantage of the use of the word "complainant" in the order of the Apex Court and say that the Applicant is liable to bring back the amount which is due and payable only to the original complainant. As stated earlier, considering the past conduct of the Applicant, assurance given in the undertaking cannot be accepted. It must be noted here that the Applicant has claimed that he is an elected councillor of a Muncipal Corporation and is an active member of a political party. Looking to gravity of allegations made by large number of investors,

custodial interrogation of the Applicant is required. No case is made out for granting Anticipatory Bail. Accordingly, Application is rejected.

JUDGE